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OFFICE OF PETITIONS

In re Application of
Jones et al.
Application No. 09/936,505
Filed: October 16, 2001
Attorney Docket No. PG3671USW

DECISION ON PETITION

This is a decision on the "Petition for Withdrawal of Holding of Abandonment Based on Failure to Receive Office Action," filed on February 15, 2005. The petition was recently forwarded to the Office of Petitions for a decision on the merits. The Office sincerely apologizes for any inconvenience.

On August 25, 2004, the Office mailed a Notice of Allowance and Fee(s) Due ("Notice of Allowance"), which set a three-month statutory period to reply. In the apparent absence of the timely payment of the issue fee, the application was held abandoned on November 26, 2004. A Notice of Abandonment was mailed on January 31, 2005.

In the present petition, the practitioner requested that the Office withdraw the holding of abandonment due to non-receipt of the Notice of Allowance.

PETITION TO WITHDRAW THE HOLDING OF ABANDONMENT

A review of the record indicates no irregularity in the mailing of the Notice of Allowance, and in the absence of any irregularity in the mailing, there is a strong presumption that the Notice of Allowance was properly mailed to the address of record. This presumption may be overcome by a showing that the Notice of Allowance was not in fact received. The showing required to establish non-receipt of an Office communication must include a statement from the practitioner, stating that the practitioner did not receive the Office communication and attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.¹ For example, if a three-month period

¹ M.P.E.P. § 711.03(c); See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G. 53 (November 16, 1993).

for reply was set in the non-received Office communication, a copy of the docket report showing all replies docketed for a date three months from the mail date of the non-received Office communication must be submitted as documentary proof of non-receipt of the Office communication. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office communication may have been lost after receipt rather than a conclusion that the Office communication was lost in the mail (*e.g.* if the practitioner has a history of not receiving Office communications).

After reviewing the documents submitted on petition, the Office concludes that the showing of record is sufficient to warrant withdrawal of the holding of abandonment. The practitioner submitted a copy of the docket records where the non-received Notice of Allowance would have been entered had it been received and docketed. Additionally, the practitioner attested to the fact that a search of the file jacket and docket records indicated that the Notice of Allowance was not received. As applicant has presented the required showing, the petition to withdraw the holding of abandonment is granted.

In view of the evidence presented in support of the contention that the practitioner did not receive the original Notice of Allowance of August 25, 2004, **Technology Center Art Unit 3754 shall remail the Notice of Allowance and restart the period for response.**

This matter is being referred to Technology Center Art Unit 3754 for further action in accordance with the present decision.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3211.

Christina Tartera Donnell

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